

# EXHIBIT 1 -

## Complaint

# EXHIBIT 1

1 CODE \$1425  
2 JULIE McGRATH THROOP, ESQ.  
3 Nevada Bar No. 11298  
4 TERRY A. FRIEDMAN, ESQ.  
5 Nevada Bar No. 1975  
300 South Arlington Avenue  
4 Reno, Nevada 89501  
5 Telephone: (775) 322-6500  
Attorneys for Plaintiff

6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE

9

10 DESHANNA GRAHAM, individually Case No.:  
11 and as Guardian Ad Litem of minor  
12 CEE'AHNY MYLES and as Guardian Dept. No.:  
13 Ad Litem of minor, CORNAE MYLES, JR.

14 Plaintiff,

15 vs.

16 WERNER ENTERPRISES, INC.;  
17 JONATHAN JOHNSTON; JOHN  
DOES I-XX, inclusive; ABC  
CORPORATIONS I-X, inclusive;  
and BLACK AND WHITE  
COMPANIES, I-X, inclusive,

18 Defendants.

19 /  
20 COMPLAINT

21 Plaintiff, DESHANNA GRAHAM, individually and as Guardian Ad Litem of Minor  
22 CEE'AHNY MYLES and as Guardian Ad Litem of Minor CORNAE MYLES, JR. by and  
23 through their undersigned counsel, Julie McGrath Throop, Esq., and Terry A. Friedman, Esq.,  
24 herein complains and alleges as follows:

25 1. That at all times pertinent and material hereto, Plaintiffs and Defendants were  
26 acting within the physical boundaries of the State of Nevada, County of Washoe.

27 2. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH vs. Virostek*,  
107 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as DOES I through

1 XX, inclusive, ABC CORPORATIONS I through X, inclusive; and BLACK AND WHITE  
2 COMPANIES I through X, inclusive are unknown at the present time; however, it is alleged and  
3 believed these Defendants were involved in the initiation, approval, support or execution of the  
4 wrongful acts upon which this litigation is premised, and that said fictitiously designated  
5 Defendants are jointly and severally liable for the damages sustained by Plaintiffs as alleged  
6 herein. When Plaintiffs become aware of the true names of said Defendants, they will request  
7 leave to amend this Complaint in order to state the true names in the place and stead of such  
8 fictitious names.

9       3. Plaintiffs do not know the true names and capacities, whether corporate or  
10 otherwise, of these Defendants sued herein as DOES I through XX, inclusive; ABC  
11 CORPORATIONS I through X, inclusive; and BLACK AND WHITE COMPANIES I through  
12 X, inclusive and Plaintiffs pray leave that when the true names of said Defendants are  
13 ascertained, they may insert the same at the appropriate allegations. Plaintiffs are informed and  
14 believe, and upon such information and belief, allege that each of the Defendants designated  
15 herein by such fictitious names are negligently responsible in some manner for the events and  
16 happenings herein referred to and negligently caused the injuries to Plaintiffs. Plaintiffs further  
17 allege that each Defendant designated herein by such fictitious names are and at all times relevant  
18 hereto were, agents of each other and have ratified the acts of each other Defendant and acted  
19 within the course and scope of such agency and have the right to control the actions of the  
20 remaining Defendants.

21       4. That Plaintiffs and Defendants are domiciliaries of the State of Nevada.

22       5. That on or about January 13, 2017, the Plaintiff, DESHANNA GRAHAM, was  
23 lawfully driving her vehicle in Washoe County, Nevada on Rock Boulevard and Longley Lane  
24 when another vehicle, driven by the Defendant JONATHAN JOHNSTON and owned by  
25 Defendant WERNER ENTERPRISES, INC. negligently and carelessly backed up into Plaintiff's  
26 ///

1 lane, striking the entire driver's side and rear-end of Plaintiffs' vehicle, causing the Plaintiffs to  
2 sustain personal injury.

3 6. That upon information and belief, the Defendants, and each of them, had a duty of  
4 reasonable care, and breached that duty of reasonable care when the Defendant JONATHAN  
5 JOHNSTON failed to adhere to the road conditions in a reasonable fashion, which was the cause  
6 in fact of said collision and proximate cause of all damages hereinafter alleged.

7 7. That upon information and belief, the Defendants, and each of them, owed a duty  
8 to the Plaintiffs and breached said duty when Defendant JONATHAN JOHNSTON exceeded the  
9 conditions of the highway and drove with excessive carelessness, which was the cause in fact and  
10 proximate cause of all damages hereinafter alleged.

11 8. That upon information and belief, the Defendant WERNER ENTERPRISES,  
12 INC. was acting by and through its duly authorized agents and/or employees and/or ratified their  
13 conduct, and Defendant JONATHAN JOHNSTON is an employee of Defendant WERNER  
14 ENTERPRISES, INC., and Defendant JONATHAN JOHNSTON caused the collision to occur  
15 while Defendant JONATHAN JOHNSTON was in the course and scope of employment, and  
16 further, Defendant WERNER ENTERPRISES, INC. is vicariously liable for the negligent  
17 conduct of Defendant JONATHAN JOHNSTON.

18 9. That upon information and belief, the Defendant WERNER ENTERPRISES,  
19 INC. failed to adequately investigate and inspect the driving qualifications of Defendant  
20 JONATHAN JOHNSTON, and employed Defendant JONATHAN JOHNSTON to drive a work  
21 vehicle, when a proper investigation and inspection would have shown that Defendant  
22 JONATHAN JOHNSTON was not qualified to drive, which is a cause in fact and proximate  
23 cause of all damages hereinafter alleged, and therefore, Defendant WERNER ENTERPRISES,  
24 INC. negligently entrusted the vehicle to Defendant JONATHAN JOHNSTON.

25 10. That upon information and belief, the Defendants were in violation of Nevada  
26 Law and Statute and are negligent per se.

27

1       11. That upon information and belief, the Defendants have caused the Plaintiffs to  
2 suffer general damages including, but not limited to, pain, suffering, aggravation, and the like,  
3 past, present and future, in excess of \$10,000.00 and/or according to proof.

4       12. That Plaintiffs have incurred special damages including, but not limited to,  
5 medical expenses and hospitalization costs, loss of earning, and earning capacity, together with  
6 incidental expenses past, present and future, in excess of \$10,000.00 and/or according to proof.

7       13. That the medical specials to date exceed \$50,000.00, and this matter should be  
8 exempt from the arbitration program of this jurisdiction, as it has a probable fact finder award in  
9 excess of \$50,000.00, because Plaintiffs sustained severe and permanent injuries.

10       WHEREFORE, Plaintiffs pray judgment as hereinafter set forth:

- 11       1. For general damages in excess of \$10,000.00, and/or according to proof.
- 12       2. For special damages in excess of \$10,000.00, and/or according to proof.
- 13       3. For incidental damages in excess of \$10,000.00, and/or according to proof.
- 14       4. For exemption from the arbitration program of this jurisdiction.
- 15       5. For court costs and disbursement, interest, and attorney's fees.
- 16       6. For such other and further relief as the Court deems proper in this matter.
- 17       7. For leave to amend the Complaint upon discovery of the true names and identities  
18 of each Doe defendant.

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**AFFIRMATION PURSUANT TO NRS 239B.030**

2 The undersigned hereby affirms that the within document does not contain the Social  
3 Security Number of any person.

4 Dated this 15 day of January, 2019.

TERRY FRIEDMAN AND JULIE THROOP, PLLC

By

JULIE McGRATH THROOP, ESQ.  
TERRY A. FRIEDMAN, ESQ.  
300 South Arlington Avenue  
Reno, Nevada 89501  
(775) 322-6500 T  
(775) 322-3123 F  
Attorneys for Plaintiff

# EXHIBIT 2 -

## Answer to Complaint

# EXHIBIT 2

1 Code: 1130  
2 Brian M. Brown, Esq.,  
3 Nevada Bar No. 5233  
4 Thorndal Armstrong Delk Balkenbush & Eisinger  
5 6590 S. McCarran, Suite B  
Reno, Nevada 89509  
Tel: (775) 786-2882  
Attorney for Defendant  
WERNER ENTERPRISES, INC.

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 DESHANNA GRAHAM, individually and as  
10 Guardian Ad Litem of minor CEE'AHNY  
MYLES and as Guardian Ad Litem of minor,  
11 CORNAE MYLES, JR.,

12 Plaintiffs,

13 vs.

14 WERNER ENTERPRISES, INC.;  
15 JONATHAN JOHNSTON; JOHN DOES I-  
XX, inclusive; ABC CORPORATIONS I-X,  
16 inclusive; and BLACK AND WHITE  
COMPANIES, I-X, inclusive,

17 Defendants.

Case No. CV19-00054  
Dept. No. 8

18 **ANSWER TO COMPLAINT**

19 COME NOW Defendant WERNER ENTERPRISES, INC., by and through its attorneys,  
20 Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiffs' Complaint,  
21 hereby admits, denies and alleges as follows:

22 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendant is without sufficient  
23 knowledge or information with which to form a belief as to the truth of all of the allegations  
24 contained therein, and upon such basis denies said allegations.

25 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendant is without sufficient  
26 knowledge or information with which to form a belief as to the truth of all of the allegations  
27 contained therein, and upon such basis denies said allegations.

28 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendant is without sufficient

knowledge or information with which to form a belief as to the truth of all of the allegations contained therein, and upon such basis denies said allegations.

3       4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendant admits that Plaintiffs  
4 are residents of Nevada. Defendant denies the remainder of the allegations of Paragraph 4.  
5 Defendant Werner Enterprises, Inc., is organized and exists under the laws of the State of  
6 Nebraska, with its principal place of business in Nebraska. Unserved Co-Defendant Johnathan  
7 Johnston is a resident of Oroville, California.

8           5.       Answering Paragraph 5 of Plaintiffs' Complaint, Defendant denies the allegations  
9 contained therein.

10       6.     Answering Paragraph 6 of Plaintiffs' Complaint, Defendant denies the allegations  
11 contained therein.

12           7.       Answering Paragraph 7 of Plaintiffs' Complaint, Defendant denies the allegations  
13 contained therein.

14           8.       Answering Paragraph 8 of Plaintiffs' Complaint, Defendant denies the allegations  
15 contained therein.

16                   9.       Answering Paragraph 9 of Plaintiffs' Complaint, Defendant denies the allegations  
17 contained therein.

18       10. Answering Paragraph 10 of Plaintiffs' Complaint, Defendant denies the  
19 allegations contained therein.

20           11.     Answering Paragraph 11 of Plaintiffs' Complaint, Defendant denies the  
21 allegations contained therein.

22           12.     Answering Paragraph 12 of Plaintiffs' Complaint, Defendant denies the  
23 allegations contained therein.

24           13.     Answering Paragraph 13 of Plaintiffs' Complaint, Defendant denies the  
25 allegations contained therein.

## **FIRST DEFENSE**

27 Plaintiffs' Complaint on file herein fails to state a claim against this Defendant upon  
28 which relief may be granted.

## **SECOND DEFENSE**

At all times and places alleged in Plaintiffs' Complaint, the negligence, misconduct, and fault of Plaintiffs exceeds that of this Defendant, if any, and Plaintiffs are thereby barred from any recovery against this Defendant.

### **THIRD DEFENSE**

It has been necessary for Defendant to employ the services of an attorney to defend this action, and a reasonable sum should be allowed Defendant as and for attorney's fees, together with its costs expended in this action.

## FOURTH DEFENSE

Defendant alleges that at all times and places alleged in the Complaint, Plaintiffs did not exercise ordinary care, caution or prudence in the premises to avoid the loss herein complained of, and that same was directly and proximately contributed to and caused by the negligence, misconduct and fault of the Plaintiffs.

## FIFTH DEFENSE

This Defendant alleges that Plaintiffs' cause of action as set forth in the Complaint is barred by the statute of limitations as contained in Chapter 11 of the Nevada Revised Statutes.

## **SIXTH DEFENSE**

Upon information and belief, Plaintiffs may have failed to mitigate their damages.

## **SEVENTH DEFENSE**

The incident which is the subject matter of this action was unavoidable, wherefore, Plaintiffs are barred from any recovery against this Defendant.

## **EIGHTH DEFENSE**

The damages, if any, incurred by Plaintiffs are not attributable to any act, conduct, or omission on the part of this Defendant; Defendant denies that it was negligent in any manner or in any degree with respect to the matters set forth in Plaintiffs' Complaint.

## **NINTH DEFENSE**

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the

1 filing of Defendant's answer, and therefore Defendant reserves the right to amend this answer to  
2 allege additional affirmative defenses if subsequent investigation warrants.

3 WHEREFORE, Defendant requests relief as follows:

4 1. That Plaintiffs' Complaint be dismissed with prejudice in its entirety;  
5 2. That Defendant be awarded reasonable attorney's fees and costs incurred in  
6 defending this matter;  
7 3. For such other and further relief as the Court deems just and proper in the  
8 premises.

9 **AFFIRMATION**

10 **Pursuant to NRS 239B.030**

11 The undersigned hereby affirms that this document does not contain the Social Security  
12 number of any person.

13 DATED this 26<sup>th</sup> day of March, 2019.

14 **THORNDAL ARMSTRONG**  
15 **DELK BALKENBUSH & EISINGER**

16 By: /s/ Brian Brown  
17 BRIAN M. BROWN, ESQ.  
18 Nevada Bar No. 5233  
19 6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
Attorney for Defendant  
WERNER ENTERPRISES, INC.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing ANSWER TO COMPLAINT to be served on all parties to this action by:

placing an original or true copy thereof in a sealed, postage prepaid envelope in the United States mail at Reno, Nevada.

Second Judicial District Court Eflex ECF (Electronic Case Filing)

hand delivery

\_\_\_\_\_ electronic means (fax, electronic mail, etc.)

Federal Express/UPS or other overnight delivery

**Julie Throop, Esq.  
Terry Friedman and Julie Throop, PLLC  
300 S. Arlington Avenue  
Reno, Nevada 89501  
Attorney for Plaintiffs**

DATED this 26<sup>th</sup> day of March, 2019.

/s/ Laura Bautista

An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger